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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,509	01/23/2001	Thomas Rudolph Batcha	ALT-0001	2815

7590 10/27/2004

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EXAMINER

INGBERG, TODD D

ART UNIT	PAPER NUMBER
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2124

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/767,509

Applicant(s)

BATCHA ET AL.

Examiner

Todd Ingberg

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-26.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: Applicant's argument's not persuasive see attachment

Todd Ingberg
Primary Examiner
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Advisory Action

Applicant's argument's are not persuasive.

1. 35 USC 112 First Paragraph

Applicant's Statement

The applicants respectfully submit that the references supplied by the Examiner show how dynamic memory may be applied in computer applications. The rejection should now be withdrawn.

Examiner's Response

Applicant's Representative had called the Examiner concerned over the rejection under 112 first. The Examiner explained how he had shown in the reference the points the Examiner had taken Official Notice on. The examiner went on to explain the Examiner believed the Applicant not the Applicant had provided grounds for enablement. This was an opportunity for the Applicant to show an understanding of what one of ordinary skill in the art should know at the time of invention. Unfortunately, on page 9 of the Applicant's response the Applicant appears not to understand the reference provided and how they support the position of Official Notice. Examiner can no longer presume the Applicant understands the Examiner's position made on the telephone and in the written record. Applicant's argument is not deemed to hold merit and clearly lacks an understanding of the reference already provided.

2. Requirement for Information - 37 USC 1.105

Applicant's Statement

Enclosed is a copy of the "User's Guide" for the commercial product FACEPLATE. The applicant's respectfully submit that the commercial product FACEPLATE is a drag-and-drop simulation front panel builder. FACEPLATE is a simulation builder. FACEPLATE does not allow the user to convert their simulation graphics into deployable code in embedded systems, as described and claimed in the present application.

Examiner's Response

The response to the Requirement For Information (RFI) was and the requirement is considered complete. It should be noted the Applicant's arguments are toward the product FACEPLATE and not the claimed invention.

3. Drawings

Applicant's Statement

"With respect to "selecting dynamic memory" the applicants respectfully disagree that this is not shown in the figures. FIG. 3, element 42 shows dynamic memory may be selected. The associated text, page 6, lines 18-21 states the translator has a number of options including "allowing dynamic memory allocation 42". Clearly this shows "selecting dynamic memory". In addition, the phrase "selecting dynamic memory" is not used in the claims. The claims do state "determining if a dynamic memory allocation is selected"."

Examiner's Response

Pages 3 and 4 of the Office action quote the claim language. The section of the Office action has been reviewed and it is correct. Applicant is correct that the Examiner did not state

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"determining if a dynamic memory allocation is selected"." in the action. Applicant's argument directed toward the actual objection is moot. Applicant's argument that the limitation is present is persuasive.

Applicant's Statement

"With respect to "translator includes an option of translating a graphical objects control logic" the applicants respectfully disagree that this is not shown in the figures. FIG. 3, element 40 shows graphical objects control logic coupled to the translator 36. The associated text, page 6, lines 18-21 state the translator has a number of options including "translating a graphical objects control logic 40". Clearly this shows "translator includes an option of translating a graphical objects control logic"."

Examiner's Response

Applicant's argument that the limitation is present is persuasive.

Applicant's Statement

"With respect to "selecting size for dynamic allocation" the applicants respectfully disagree that this is not shown in the figures. FIG. 3, element 44 shows data sizing. The associated text, page 6, lines 18-21 state the translator has a number of options including "sizing a data structure 44". Clearly this shows "selecting size for dynamic allocation". In addition, the phrase "selecting size for dynamic allocation" is not used in the claims. The claims do state "selecting a memory allocation size"."

Examiner's Response

Pages 3 and 4 of the Office action quote the claim language. The section of the Office action has been reviewed and it is correct. Applicant is correct that the Examiner did not state "selecting size for dynamic allocation" in the action. Applicant's argument directed toward the actual objection is moot. Applicant's argument that the limitation is present is persuasive.

Applicant's Statement

"With respect to "identifying a target processor", FIG. 1 has been modified to show a target processor coupled to the compiler 16. The supporting text is shown on Page 8, lines 3-4, which states "the system identifies a target processor for a compiler"."

Examiner's Response

Applicant's argument that the limitation is present is persuasive.

Applicant's Statement

"The rejections based on the drawing should be withdrawn."

Examiner's Response

Drawings are not able to be rejected they are only able to be objected. The bar is relatively low for showing limitations including a response that a limitation can not be drawn. However, the argument's that limitations are present in drawings do not automatically relieve the written description requirements. The drawing objections are withdrawn.

4. Overview

Applicant's Statement

“The Applicants respectfully believe that the Examiner is missing the key points related to this patent application. The present application is directed to creating a graphical interface, such as those found in airplanes and automobiles. The present application explains how a system can be created which allows the engineers and designers to use the simulation graphics they used to prototype the graphical interface to automatically create runtime code for their system. All previous systems for creating graphical interfaces for non-general purpose computers (embedded systems) required two steps: 1) simulate the graphical interface; and 2) write executable code for the production versions of the graphical interface. These solutions resulted in differences between the simulation and the production interface and a significant amount of additional-work trying to recreate the simulated interface in the production environment.

VOOP is a programming language that replaces written commands with visual commands in programming. VOOP is not directed to the problem of simulating graphical interfaces in embedded systems, such as aircraft displays. It might be possible to use a version of VOOP to create the system that is the subject of this application instead of a language such as C++, but this does not show or render obvious that present application which describes a system that allows the user to convert their simulated graphical interface into an executable graphical interface for the specific embedded system. VOOP is more analogous to C++ than the present application.”

Examiner's Response

Applicant is attempting to limit VOOP to an limitations in C++. C++ is not a visual development environment. Visual Object Oriented Programming (VOOP) is a visual development environment. The ability to have a visual environment with C++ as a layer below is present in the record. The attack on the rejection is piecemeal. This analogy is not persuasive.

5. In response to applicant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

6. Specific Claim Rejections

Applicant's Statement

“Claims 1-14 & 23-26 stand rejected based on FACEPLATE. Claim 1 requires a compiler. FACEPLATE does not have a compiler. FACEPLATE graphical code can only be run with a simulator program. The FACEPLATE code is only interpretive and is not compiled into a stand alone executable that can be run in an embedded system. In addition, FACEPLATE does not have a translator since it does not covert graphical objects into a high-level computer language code. Claim 1 is allowable.”

Examiner's Response

Applicant is arguing the product FACEPLATE not the claimed invention. No where in

the present claim limitations are the limitations argued above. Examiner believes

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Applicant that FACEPLATE has these features but they are not automatically transferable to the claimed invention. Patent claims must be clearly and concisely claimed. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., simulator and interpreter) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's Statement

"Claims 2-4 are allowable as being dependent upon an allowable base claim."

Examiner's Response

For the same reasons stated above the claims are not allowable.

Applicant's Statement

"Claims 5-9 are related to the translator. FACEPLATE does not have a translator."

Examiner's Response

Examiner believes Applicant's about FACEPLATE. However, the claims were also rejected under BACCII. This rejection went unanswered.

Applicant's Statement

"Claim 10 requires translating the graphical display into a high level computer language code and compiling the code. FACEPLATE does not have a compiler. FACEPLATE graphical code can only be run with a simulator program. The FACEPLATE code is only interpretive and is not compiled into a stand alone executable that can be run in an embedded system. In addition, FACEPLATE does not have a translator since it does not convert graphical objects into a high-level computer language code. Claim 10 is allowable."

Examiner's Response

Examiner believes Applicant's about FACEPLATE. However, the claims were also rejected under BACCII. This rejection went unanswered.

Applicant's Statement

"Claim 11 requires identifying a target processor. FACEPLATE does not require identifying a target processor since it is not designed to run on an embedded system. Claim 11 is allowable."

Examiner's Response

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Examiner believes Applicant's about FACEPLATE. However, the claims were also rejected under BACCII. This rejection went unanswered.

Applicant's Statement

"Claims 12 & 13 cover various parts of the translation process. FACEPLATE does not translate into a high level computer language code. Claims 12 & 13 are allowable. Claim 14 is allowable as being dependent upon an allowable base claim."

Examiner's Response

Examiner believes Applicant's about FACEPLATE. However, the claims were also rejected under BACCII. This rejection went unanswered.

Applicant's Statement

"Claim 23 requires a code builder for translating array data into high level computer code. FACEPLATE does not create high level computer code. Claim 23 is allowable."

Examiner's Response

Examiner believes Applicant's about FACEPLATE. However, the claims were also rejected under BACCII. This rejection went unanswered.

Applicant's Statement

"Claim 24 requires a data sizing function. Since FACEPLATE is an interpretive type program it does not require a data sizing function. Claim 24 is allowable."

Examiner's Response

Examiner believes Applicant's about FACEPLATE. However, the claims were also rejected under BACCII. This rejection went unanswered.

Applicant's Statement

"Claim 25 is allowable as being dependent upon an allowable base claim."

Examiner's Response

For the same reasons above the claim remains rejected.

Applicant's Statement

"Claim 26 requires a dynamic memory allocation choice. Since FACEPLATE is an interpretive type program it does not require a dynamic memory allocation choice. Claim 26 is allowable."

Examiner's Response

Examiner believes Applicant's about FACEPLATE. However, the claims were also rejected under BACCII. This rejection went unanswered.

Applicant's Statement

"Claims 15-20 stand rejected based on VOOP. VOOP is a programming language and does not explain or render obvious how to create executable code for an embedded system from a graphical simulation. Claim 15 as amended makes it clear that the high level computer language code creates the graphical display formed in the graphics environment. VOOP does not create high level computer language code that creates the graphical display in the graphics

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environment. The graphic symbols in the graphics environment are analogous to command lines and are not intended as an end product. Claim 15 is allowable over the prior art.”

Examiner’s Response

Patent claims must be clearly and concisely claimed. In response to applicant's argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., embedded system, graphical simulation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant’s Statement

“Claims 16-17 are allowable as being dependent upon an allowable base claim.”

Examiner’s Response

For the same reasons above the claims remains rejected.

Applicant’s Statement

“Claims 18-22 requires a translator with various functions. There is no discussion of a translator designed to create high level computer code that creates a graphical display. Claims 18-22 are allowable.”

Examiner’s Response

Applicant’s earlier arguments which ignore Visual Object Oriented Programming (VOOP) and discount the rejection with the analogy of a non visual development programming language C++ seems to be the foundation of this unpersuasive argument.

7. Official Notice

Applicant’s Statement

“Note that the Examiner has used Official Notice to reject some of the claims, the applicants traverse the Official Notice and demand that the Examiner find references to support his position.”

Examiner’s Response

Page 17 of the Office action contains a section called Examiner’s Defense of Official Notice was also supported by references made of record. Applicant’s has failed to provide a clear and concise argument. If Applicant is stating they did not receive the references they had 30 days to notify the Office.

Correspondence Information

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Todd Ingberg** whose telephone number is **(571) 272-3723** (as of October 23, 2004).

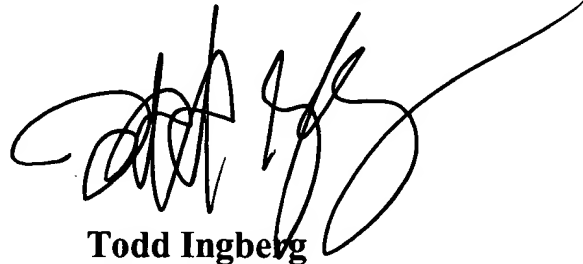
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kakali Chaki** can be reached on **(571) 272-3719**. Please, note that as of August 4, 2003 the **Official FAX number** changed to **(703) 872-9306**.

Also, be advised the United States Patent Office **new address** is

Post Office Box 1450

Alexandria, Virginia 22313-1450

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

A handwritten signature in black ink, appearing to read 'Todd Ingberg', with a long horizontal line extending to the right.

Todd Ingberg
Primary Examiner
Art Unit 2124
October 24, 2004